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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,159	10/20/2003	Kevin L. Kimle	P03566USD1	6394
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TRAN, HAI				
ART UNIT		PAPER NUMBER		
3694				
NOTIFICATION DATE		DELIVERY MODE		
04/06/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patatty@ipmvs.com

Office Action Summary

Application No.

10/689,159

Applicant(s)

KIMLE ET AL.

Examiner

HAI TRAN

Art Unit

3694

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 17, 2010 has been entered.

Status of the Claims

2. This is the communication in response to Applicant's Amendment filed on March 17, 2010 for application, titled: "Method for Electronically Initiating and Managing Agricultural Production Contracts".
3. No claim has been amended or cancelled. Accordingly, claims 1-29 remain pending in this application and have been examined.

Response to Arguments

4. Applicant's arguments filed March 17, 2010 have been fully considered but they are not persuasive.

Claims 1-13, 18-20, 25, and 29:

5. Applicant argues that the Manual and Walker references, alone or a combination of, do not show a *prima facie* case of obviousness of Applicant's claim 1 as a whole (35

U.S.C. § 103). Applicant also argues that analysis must be from the view point of “at the time the invention was made” (as opposed to now) and relative to the knowledge and perspective of “a person having ordinary skill in the art to which said subject matter pertains.” (see Remarks, page 2-5).

6. Applicant argues that the invention as a whole does not define anything like the live exchange commodities trading of the Manual reference. Applicant argues that the invention as a whole does not define application of a conditional purchase offer as in the Walker reference (see Remarks, page 3, third and fourth paragraph).

Response:

7. The Examiner respectfully disagrees with the Applicant. The Examiner has carefully reviewed Applicant's specification and claims. Applicant's invention is an electronic system and method for creating a “forward contract” specifically for types and amount of agricultural commodities on the Internet. A “forward contract” is non-standardized, customizable, non-exchange and traded over the counter between counterparties.

8. However, these specific features of forming a “forward contract” are not seen or recited in Applicant's claims. Applicant's independent claim 1 recites a “contract”, not a “forward contract” or a contract with the specific features of a “forward contract”. Hence, the inventive concept for forming a “forward contract” on the Internet is not seen in the claims as written (the Examiner does not see any differentiate limitation(s) of a forward contract in the claims). In fact, when the Examiner takes out the agricultural

commodities from the independent claim 1, the claim shows that it corresponds to a "standard process" for creating a "contract" on the Internet:

9. A method of facilitating the contracting of ... using the internet comprising the steps of:

- providing a web server connected to the Internet;
- providing a centralized database system for the storage and retrieval of data;
- storing the data in the database system ... ;
- in response to a command input into the system, displaying a listing of ... ;
- including information related to ... ;
- receiving input data from ... and;
- generating a "contract"

10. As it can be seen that the claim discloses a common process for buyers and sellers to create a "contract" on the Internet. Applicant's claim is basically an automation of a manual process. It is old and well known to in the art to automate a manual or known process using a processor. Automating a manual process speeds the process and increases accuracy over manual actions and that all the elements (providing, storing, displaying, including, receiving and generating) are disclosed in Walker and Manual.

11. Manual teaches a process and information related to contracting agricultural commodities including types and amounts of agricultural commodities, trading by buyers desiring agricultural commodities and suppliers willing to supply agricultural commodities and sales contracts for such agricultural commodities.

12. Walker teaches a method and contract system (non-exchange) for prospective buyers and sellers to bind a contract (customizable) on the Internet.

13. Walker teaches all elements in the claim including providing a web server, database storage, storing data, displaying data, receiving data, and generating a contract; and Manual teaches a process and information related to contracting agricultural commodities.

14. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to automate the process of Manual by providing a processor as taught by Walker in order to gain the efficiency and effectiveness for buyers and sellers to bind a contract on the Internet.

15. In response to Applicant's argument of as a whole, the Examiner notes that the specific features for forming a "forward contract" which Applicant upon relies (i.e. non-standardized, customized, non-exchange) are not seen or recited in the rejected claims. Although the claims are interpreted in light of the specification, the limitations from the specification are not read into the claims. Hence, under the broadest reasonable interpretation in light of the specification, the claims are taught and no inventive concept is found.

16. **Claims 14-17, 21-24, and 26-28:**

17. Applicant argues that these dependent claims are believed to be allowable for at least the reasons discussed in claim 1.

Response:

18. The Examiner respectfully disagrees with the Applicant. For the reasons discussed in claim 1 above, the Examiner decides to maintain the rejections of these dependent claims.

19. In conclusion, the Examiner believes he has provided the Applicant with a thorough reasoning why the particular combination of Manual and Walker is proper, and with the particular citations applicable to the claimed invention as well as a brief characterization of how such citations are applied to the claim language. For the reason set forth above, the Examiner decides to maintain the rejections based on the Manual and Walker references described in the previous Office Action.

Claim Rejections - 35 USC § 103

20. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

21. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

22. Claims 1-13, 18-20, 25, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Commodity Trading Manual ("Manual") in view of Walker et al. (U.S. Patent No. 5,794,207) ("Walker").

23. **With respect to Claim 1**, Manual teaches a method of facilitating the contracting of agricultural commodities using the Internet comprising the steps of:

providing a web server connected to the Internet (see Walker, col. 11, lines 55-61, Figures 1, 2/element 200. Manual, page 35 where it says "Futures exchanges provide a location for buyers and sellers to meet");

providing in operative communication with the server a centralized database system for the storage and retrieval of data (see Walker, col. 11, lines 3-7, Figure 2/element 250. Manual, page 35 where it says "This activity is centralized on the trading floor of each futures exchange");

storing data in the database system relating to types and amounts of potential commodities desired by one or more commodity buyers (see Walker, col. 12, lines 54-67, Figure 2/element 250. Manual, pages 36 where it says "This is accomplished by futures exchanges through a variety of communication systems. The Chicago Board of Trade's advanced computer system");

in response to a command input into the system, displaying a listing of desired commodities including information related to the types, amounts available of the commodities (see Walker, col. 14, lines 53-65, Figure 3 and 4 "display device". Manual, page 194 where it says "Varieties of Com");

receiving input data from a potential supplier of a commodity relating to a specific type and amount of a commodity which the supplier is willing to supply to a buyer harvest or at other times (see Walker, col. 14, lines 53-65, Figure 3 and 4 "input device". Manual, pages 36 where it says "Transactions made on the trading floor must be reported"); and

generating a contract for the sale of the specific type and amount of the commodity by the supplier to the buyer (see Walker, col. 15, lines 60-7 of col. 17, Figure 5/elements 500-580. Manual, pages 315 and 324).

24. Manual discloses a process and information related to contracting agricultural commodities including types and amounts of agricultural commodities, trading by buyers desiring agricultural commodities and suppliers willing to supply agricultural commodities and sales contracts for such agricultural commodities. However, Manual does not expressly disclose a web server for buyers and sellers to create a contract on the Internet.

25. Walker discloses a contract system and method for prospective buyers of goods and services to bind a contract with prospectively sellers on the Internet. Walker discloses all elements in the claim including providing a web sever, database storage, storing data, displaying data, receiving input data, and generating contract.

26. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to automate the process as taught by Manual using the system/method as taught by Walker in order to gain the efficiency and effectiveness for buyers and sellers to create a binding contract on the Internet, and since the claimed

invention is merely an automation of a well known process, all this would be accomplished with no unpredictable results.

27. **With respect to claim 2**, Manual in view of Walker teaches the method claim 1, wherein information inputted into the system is inputted via a Web browser (see Walker, col. 11, lines 53-65, Figures 1, 2/element 200).

28. **With respect to claims 3 and 19**, Manual in view of Walker teaches the method of claim 1, wherein information into the system is inputted via an applet in Java or another program language (see Walker, col. 14, lines 27-28 "the system also supports multiple languages").

29. **With respect to claims 4-9**, Manual in view of Walker teaches the method of claim 1, wherein the agricultural commodities are comprised of agricultural products, grains or oilseeds, fruits or vegetables, animals or fish, horticultural products or ornamental plants (see Walker, col. 14, lines 53-65, Figure 3 and 4 "display device". Manual, page 194 where it says "Varieties of Corn"), and wherein the step of storing data in the database system relating to types and amounts of agricultural commodities further comprises the steps of: storing data identifying a quantity of agricultural products desired by the buyer; and storing data related to a desired allocation of the quantity of agricultural products among a plurality of areas (see Walker, col. 12, lines 54-67, Figure 2/element 250. Manual, pages 36 where it says "This is accomplished by futures

exchanges through a variety of communication systems. The Chicago Board of Trade's advanced computer system").

30. **With respect to claim 10**, Manual in view of Walker teaches the method of claim 4, wherein the steps of displaying a listing of desired commodities further comprises the steps of: displaying a listing of desired agricultural products available in desired areas (see Walker, col. 15, lines 50-52 "by posting CPO 100 on the web page of central controller"); and updating the listing to reflect a change in data as a result of contracting between the supplier and the buyer (see Walker, col. 16, lines 46-49 "adds an expiration date ... his needs have changed", col. 17, lines 27-55 of col. 18).

31. **With respect to claims 11 and 12**, Manual in view of Walker teaches the method of claim 1, wherein the contract generated is a paper contract (see Walker, col. 17, lines 22-23 "paper form"), an electronic contract executed using digital signatures (see Walker, col. 19, lines 43-44 "a digital signature").

32. **With respect to claim 13**, this claim corresponds to claims 1 and 10 of updating data. Therefore, it is rejected under the same rationale in these claims.

33. **With respect to claim 18**, Manual in view of Walker teaches the method of claim 13, wherein the centralized database system is installed on an Internet Web browser,

and users of the database system access the database system via an Internet Web browser (see Walker, col. 11, 53-65, Figure 1).

34. **With respect to claim 20**, this claim corresponds to claims 4 and 13. Hence, it is rejected under the same rationale provided in claims 4 and 13.

35. **With respect to claim 25**, this claim includes apparatus for contracting for agricultural commodities. Hence, it is rejected under the same rationale provided in claims 1-24.

36. **With respect to claim 29**, this claim corresponds to claim 1 except the limitations of "customizable" and "between counter parties outside of conventional commodities exchanges". The Examiner interprets this claim as a non-exchange contracting system for agricultural commodities.

37. Manual discloses a process and information related to contracting agricultural commodities including types and amounts of agricultural commodities, trading by buyers desiring agricultural commodities and suppliers willing to supply agricultural commodities and sales contracts for such agricultural commodities. However, Manual does not expressly disclose a web server for buyers and sellers to create a contract on the Internet.

38. Walker discloses a contract system and method (non-exchange) for prospective buyers of goods and services to bind a contract (customizable) with prospective sellers

on the Internet. Walker discloses all elements in the claim including providing a web sever, database storage, storing data, displaying data, receiving input data, and generating contract.

39. Therefore, it would have been obvious to one of ordinary skill still in the art to include in the contract system of Walker the ability for prospective buyers/sellers to bind a contract of the agricultural commodities as taught by Manual over the Internet since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

40. Claims 14, 15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over manual in view of Walker and further in view of Official Notice.

41. **With respect to claims 14 and 15**, Manual in view of Walker does not expressly teach management of delivery terms and times and quality data for delivered products.

42. However, the Examiner takes an Official Notice that it is old and well known to have buyer determine delivery terms and methods included in a contract. For example, the buyer must determine such terms to assure that someone is present to take delivery (i.e. FedEx and UPS do not leave delivery items in household mail box if no one available to receive the items); including such terms in a contract provides enforceability for the delivery terms. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Manual in view of Walker to provide buyer

determined delivery in a contract to assure that delivery is made per the buyer requirements.

43. **With respect to claim 17**, Manual in view of Walker does not expressly teach pricing based on delivery time or quality. The Examiner takes an Official Notice that basing pricing a contract on quality is old and well known in the art. For example, contract pricing of electronic bandwidth is based on quality of service. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Manual in view of Walker to use quality as a factor in pricing because this would have assured buyers that they would receive value for money spent.

44. Claims 16 and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Manual in view of Walker and further in view of Walker-1 (U.S. Patent No. 6,553,346) ("Walker-1").

45. **With respect to claim 16**, Manual in view of Walker teaches the method of claim 13, but does not explicitly teach the pricing contract based on variables. However, Walker-1 teaches comprising electronically pricing the contract based on a variable (see Walker-1, col. 12, lines 43-10 of col. 13). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Manual in view of Walker to use the variable based pricing contract feature as taught by Walker-1 to assure buyer would receive value for money spent.

46. **With respect to claim 26**, this claim includes the necessary system and components for implementing the method claims 1-24 and have the same elements and limitations. Hence, it is rejected under the same rationale provided in claims 1-24.

47. **With respect to claim 27**, Walker-1 teaches a software security component to restrict access to the system (see Walker-1, col. 12, lines 27-30, col. 15, lines 3-5). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Manual in view of Walker to use the access security feature as taught by Walker-1 to assure the system can be used by the authorized users only.

48. **With respect to claim 28**, Walker-1 teaches varying levels of access to data by authorized users of the system (see Walker-1, col. 9, lines 59-62). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Manual in view of Walker to use the access security feature as taught by Walker-1 to assure the system can be used by the authorized users only.

49. Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Manual in view of Walker and further in view of Lindsey (U.S. Patent No. 5,285,383 ("Lindsey")).

50. **With respect to claims 21-23**, Manual in view of Walker teaches the method of claim 13, further comprising the step of allocating the stored data relating to the number

of acres of agricultural crops desired among a plurality of elevators, desired into distinct geographic regions, and allocating the data according to one of following: product type, time of delivery, method of delivery, end-user buyer (col. 12, lines 15-42, figure 7, col. 15, and lines 41-12 of col. 16).

Manual in view of Walker does not specifically teach allocation based on agricultural contract variables such as allocation by elevators or by geographic region. However, Lindsay teaches a commodity trading system for agricultural commodities, cotton, one of the commonly traded commodity, is popularly grown in the Texas and Oklahoma regions (geographic region) (col. 28, lines 14-17). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the teachings of Manual in view of Walker, relating to conditional purchase offer management, with the teachings of Lindsay, relating to agricultural commodity trading, to offer more variety of goods and services (col. 1, lines 31-35).

51. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Manual in view of Walker, Walker-1, and Smith (U.S. Patent No. 5,963,952) ("Smith") and further in view of Hipsley ("Developing Client/Server Applications with Oracle Developer/2000", Sams Publishing, 1996, "Paul Hipsley") ("Hipsley").

52. **With respect to claim 24**, Manual in view of Walker and Walker-1 does not teach using a control script to limit amount of state data stored by the Internet.

However, Smith teaches the invention substantially as claimed, including provision of a control script to store state data during the execution of a task, the state

data stored identifying a subset of master state data stored in the database system (Smith, col. 5, line 31-4 of col. 7, col. 6, lines 14-23); entering the state data stored by the browser into the database system to update the subset of the master state data upon completion of the task (Smith, col. 6, lines 19-23 and col. 7, lines 1-4); and preventing the state data stored by the browser to be entered into the database system and updating the subset of the master data when the task is aborted by the user (Smith, col. 6, lines 14-19).

Smith does not expressly teach the application of his method to update databases. Hipsley teaches the updating of databases at page 74, item underlined and "UPDATE" topics at pages 92 and 102. It would have been obvious to one of ordinary skill in the art at the time of the invention to have updated the databases as taught by Hipsley in a combination with the method of Smith, Manual, Walker and Walker-1 because this would have brought the benefits of generally applied technique of Smith to the specific instance of Hipsley's database. The combination is also suggested by the fact that the Smith and Hipsley have common matter in data entry.

Conclusion

53. Claims 1-29 are rejected.
54. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE**

FINAL even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

55. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

56. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HAI TRAN whose telephone number is (571)272-7364. The examiner can normally be reached on M-F, 9-4 PM.

57. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammell can be reached on (571) 272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

58. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ella Colbert/
Primary Examiner, Art Unit 3694

/H. T./
Examiner, Art Unit 3694